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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

RECEIVED

JUN - 8 2005

In the Matter of J E RHOADS AND SONS

HEARING DOCKET

CP05EA0009

2004EA700876
The Honorable

FAA 2005-20639-3

COMPLAINANT'S MOTION TO LIMIT HEARING
TO ISSUE OF SANCTION

COMES NOW the Complainant, by and through its designated representative, the Regional Counsel for the Eastern Region and her designated and authorized agents, and moves to limit the hearing in the above-captioned case to the issue of sanctions.

1. On February 28, 2005, J E RHOADS AND SONS, Respondent, filed a request for a hearing. On March 9, 2005, the Complainant filed a Complaint in this matter pursuant to Rule 13.208 of the Rules of Practice for FAA Civil Penalty Actions. (See Exhibit 1). The Complaint was mailed to Respondent by Certified Mail, PS Form 3000 #7001 2510 0008 5123 3804 (See Exhibit 2).
2. The Complaint was received by Respondent on March 11, 2005 (see Exhibit 3).
3. Together with the Notice of Proposed Civil Penalty Respondent was provided with a copy of the Rules of Procedure for Civil Penalty Actions.

4. Under Rule 13.209(a), the Respondent is required to file a written answer to the complaint "not later than 30 days after service of the complaint."
5. Additionally, Respondent was specifically notified in the complaint (see exhibit 2) that an answer was required within thirty (30) days.
6. Notwithstanding this requirement, Respondent has failed to file an answer to the complaint. Preparation of Complainant's case is more difficult due to Respondent's failure to file an answer.
7. Under Rule 13.209(f), "a person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation in the instant complaint."
8. Respondent has failed to show good cause for failing to file an answer.
9. If the facts as alleged in the Complainant's complaint are deemed true, they support a finding of violation of the following section(s) of the Department of Transportation Hazardous Materials Regulations:

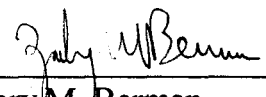
172.704(d)
10. Procedural rules must be enforced in a non-arbitrary manner to ensure the integrity of the civil penalty process, even when this results in severe consequences. In the Matter of Jimmy Lee Harkins, FAA Order No. 94-22, page 4, June 22, 1994.

11. As stated in In The Matter of Playter, FAA Order No. 1990-15, March 19, 1990; "Although the deemed admission of 13.209(f) is a severe penalty for failure to file an answer, the rule is clear, and does not permit exception in the absence of good cause. See also, In The Matter of Raul Nunez, FAA Order No. 1994-8, March 10, 1994; In The Matter of Safety Equipment and Sign Co., Ltd.; FAA Order 1992-76, Footnote 9, December 21, 1992; In The Matter of Atlantic World Airways, FAA Order 1995-28, December 19, 1995 and In The Matter of Larry's Flying Service, Inc. FAA Order No. 98-4, March 12, 1998.

WHEREFORE, the Complainant moves that the Administrative Law Judge deem Respondent's failure to deny the truth of the allegations, set forth in the complaint, as an admission of the truth of these same allegations, and that the hearing in this matter be limited to the issue of sanctions.

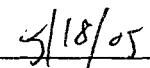
Loretta E. Alkalay
Regional Counsel

By:



Zachary M. Berman
Attorney
Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434
Telephone: 718 553-3258

Date:



5/18/05

Facsimile: (718) 995-5699

CERTIFICATE OF SERVICE


I hereby certify that the foregoing Motion to Limit Hearing To Sanction has been placed this date in the United States mail, postage prepaid, by Certified Mail - Return Receipt Requested addressed as follows:

Administrative Law Judge
Office of Hearings, M-20
Room 5411
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Federal Aviation Administration (Original and one copy)
800 Independence Avenue, S.W.
Washington, D.C. 20591
Attn: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014

Rene Morf
J E Rhoads & Sons
210 Meister Ave
Branchburg, NJ 08876

Date: JUN 1 2005


Maryann Mignone
Legal Technician



U.S. Department
of Transportation

Federal Aviation
Administration

Eastern Region
Regional Counsel
Telephone: 718 553-3258
Facsimile: (718) 995-5699

1 Aviation Plaza
Room 561
Jamaica, NY 11434

EXHIBIT

1

Page 1 of 6

MAR 9 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591
Attn: Hearing Docket Clerk, AGC-430
Wilbur Wright Building -- Room 2014

ATTN: HEARING DOCKET CLERK

Re: In the Matter of J E RHOADS AND SONS
Docket No. 2004EA700876

Enclosed herein please find a copy of a request for hearing and the original and one copy of the FAA's Complaint in the above-entitled action for filing, together with proof of service upon the Respondent.

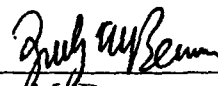
The FAA requests that the hearing in this matter be held in the New York area, and expects that the hearing will last one day.

Please address all communications for the Federal Aviation Administration to the attention of Zachary M. Berman, Office of the Regional Counsel, 1 Aviation Plaza Room 561 Jamaica, NY 11434.

Sincerely,

Loretta E. Alkalay
Regional Counsel

By:


Zachary M. Berman
Attorney

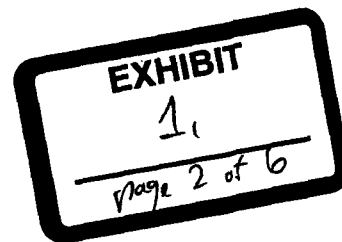
Enclosures

cc: AEA-700/NY-CASFO

Regional Counsel for the Eastern Region
Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434

Date

2/22/05



J E RHOADS AND SONS - 2004EA700876
Subject: Final Notice of Proposed Civil Penalty
Response Attachment

In reply to your Final Notice of Proposed Civil Penalty J E RHOADS AND SONS elects to proceed as indicated by its check mark beside the numbered paragraph below:

1. ☐ J E RHOADS AND SONS hereby submits the amount of the proposed civil penalty with the understanding that an Order Assessing Civil Penalty will be issued in that amount.
2. ☒ J E RHOADS AND SONS hereby requests a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations.

By sending this form to the Federal Aviation Administration, Eastern Region, J E RHOADS AND SONS also hereby certifies that a copy of this form has been filed with the Hearing Docket Clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk).

** Please note that J E RHOADS AND SONS will not be entitled to a hearing if it files this form with the Federal Aviation Administration, Eastern Region, WITHOUT having filed this form or a written request for a hearing with the HEARING DOCKET CLERK.

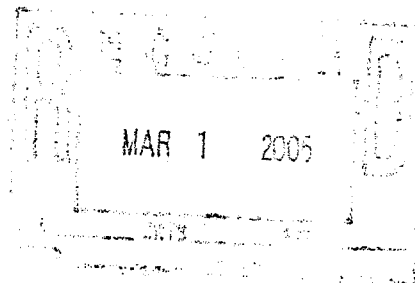
ATTORNEY/REPRESENTATIVE

Name: RENE MORF
Firm: J E RHOADS & SONS
Address: 210 MEISTER AVE, BRANCHBURG, NJ 08876
Phone No. (708) 429-4100

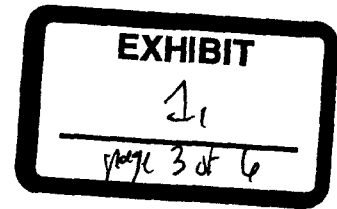
RENE MORF

[Handwritten signature]

2/22/05



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
OFFICE OF HEARINGS
WASHINGTON, D.C.



In the Matter of J E RHOADS AND SONS

2004EA700876
Judge Not Assigned

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I

Respondent, J E RHOADS AND SONS, was advised through a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$2,000. On February 28, 2005, Respondent submitted a written demand for a hearing.

II

1. On or about August 13, 2004, agents of the Federal Aviation Administration (FAA) conducted a comprehensive assessment of J E Rhoads and Sons (hereinafter "the assessment").
2. During the assessment, it was discovered that J E Rhoads and Sons did not have any records indicating training for one of its employees, one Roy Jens (hereinafter "Mr. Jens").
3. During the assessment, it was discovered that on or about May 21, 2004, Mr. Jens had handled the preparation and offering of a shipment containing Hazardous Materials (HAZMAT) to Federal Express for transport by air (hereinafter "the shipment").

4. Specifically, the shipment contained Ethyl Methyl Ketone, Class 3, UN 1193.

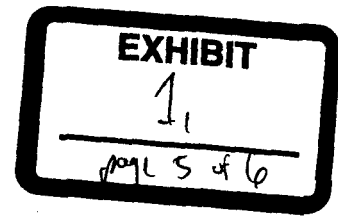
III

By reason of the foregoing facts and circumstances, Respondent violated the following section(s) of the Department of Transportation Hazardous Materials Regulations:

1. Section 172.704(d), which states that a record of current training, inclusive of the preceding three years, in accordance with this section shall be created and retained by each hazmat employer for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. The record shall include: (1) the hazmat employee's name; (2) the most recent training completion date of the hazmat employee's training; (3) a description, copy, or the location of the training materials used to meet the requirements in paragraph (a) of this section; (4) the name and address of the person providing the training; and (5) certification that the hazmat employee has been trained and tested, as required by this subpart.

IV

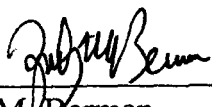
1. Pursuant to 49 U.S.C. §5123, Respondent is subject to a civil penalty of at least \$250 but not more than \$30,000 for each of the violations alleged.
2. Under the facts and circumstances of this case, a civil penalty of \$2,000 is appropriate.



WHEREFORE, the FAA, by counsel, respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of \$2,000.

Respectfully submitted,

Loretta E. Alkalay
Regional Counsel

By: 
Zachary M. Berman
Attorney

Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434
718 553-3258
(718) 995-5699

NOTE:

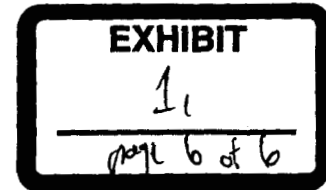
The Rules of Practice for this proceeding are set forth in Part 13, Subpart G, of the Federal Aviation Regulations (14 C.F.R. Part 13).

The Rules of Practice provide that Respondent must file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service. A general denial is deemed a failure to file an answer (Section 13.209(e)).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint has been placed this date in the United States mail, postage prepaid, by Certified Mail - Return Receipt Requested addressed as follows:

Rene Morf
J E Rhoads & Sons
210 Meister Ave
Branchburg, NJ 08876




Federal Aviation Administration (Original and one copy)
800 Independence Avenue, S.W.
Washington, D.C. 20591
Attn: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014

~IF FILING BY FEDERAL EXPRESS

Federal Aviation Administration (Original and one copy)
600 Independence Avenue, SW
Wilbur Wright Building – Room 2014
Washington, DC 20591
Attn: Hearing Docket Clerk, AGC-430

Date: MAR 9 2005


Maryann Mignone
Legal Technician
Federal Aviation Administration
Office of Regional Counsel
1 Aviation Plaza
Room 561
Jamaica, NY 11434

CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIALS

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Certified Fee

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(Endorsement Required)**

**Restricted Delivery Fee
(Endorsement Required)**

Total Postage & Fees

MAR 9 2005

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2004-A700876

230

Sent To Rene Morf - J.E. Kheavov Jones

Street, Apt. No.,
or PO Box No.

City, State, ZIP ⁴ Branchburg, NJ 08876

PS Form 3800, January 2001

See Reverse for Instructions

EXHIBIT

2



Track & Confirm

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EXHIBIT

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